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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GERRY DONNELLY,

Petitioner and Respondent,

v.

VIDA F. NEGRETE,

Objector and Appellant.

D053018

(Super. Ct. No. 37-2008-00150109-  
PR-TR-NC)

APPEAL from orders of the Superior Court of San Diego County, Richard G. Cline and David G. Brown, Judges. Affirmed; judicial notice granted; no sanctions imposed.

This appeal arises out of rulings by the probate court concerning the administration of a trust containing settlement proceeds for Bibiano Becerra (Conservatee), who was seriously injured in a construction accident in 2003, and in a separate action against one of the companies involved, recovered approximately \$1.6 million in settlement of his claims. (*Becerra v. Rudolph & Sletten* (Super. Ct. San Diego

County, 2005, No. GIC 842018.) He is currently under conservatorship due to his 2003 traumatic brain injuries, and those orders are the subject of a related appeal that is being heard concurrently with this matter. (Prob. Code, §§ 1800 et seq.; 17000 et seq.)<sup>1</sup> (D052972, the "conservatorship case.") Since 2005, Conservatee has lived at a care facility in San Diego County.

Conservatee's wife, Liliana Becerra (Wife), served as his guardian ad litem during the personal injury settlement discussions, and she received her own settlement monies for loss of consortium (\$300,000). In the previous compromise approval order of January 4, 2007, the San Diego superior court established a private settlement trust (the trust) to hold his funds. The trust was not court supervised and was entered into between Wife as trustor and appellant Vida F. Negrete, Ph.D., R.N. (Objector) as the original trustee (a private fiduciary located in the Los Angeles area; she was nominated by his former counsel, who has been replaced by Wife).

Objector is appealing the probate court orders removing her as trustee and installing as the new interim trustee, petitioner and respondent Gerry Donnelly (Donnelly), a private fiduciary, whose positions are supported by Wife, and who was also appointed as conservator, after hotly contested proceedings also involving Objector (dealt with in the related appeal).

After reviewing the briefs and record, we affirm the San Diego probate court's ruling that removed Objector as trustee and appointed Donnelly as interim trustee.

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<sup>1</sup> All further statutory references are to the Probate Code unless noted.

Objector has provided no basis for this court to conclude that the San Diego court lacked jurisdiction to administer the affairs of the trust, nor that it was any abuse of discretion to do so. We reject Objector's claim that her place of business in Los Angeles County provides exclusive jurisdiction in that court, because the record does not support any such application of the jurisdiction and venue provisions concerning trusts in section 17000, et seq.<sup>2</sup> Rather, the appropriate factual and statutory criteria support the probate court's choice of San Diego as the "principal place of administration of the trust," where the "day-to-day activity of the trust" is carried on, particularly because of the pending conservatorship matter. (§ 17002, subd. (a).) We explain.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Clerk's and Reporters' Transcripts

In the related conservatorship appeal, we outline in more detail those proceedings, but here, address only the issues regarding the trust. As noted above, it was established as a private, not court controlled, trust, and approved by the San Diego superior court order that accepted the compromise personal injury settlement January 4, 2007. The copy of the order provided to this court does not name a trustee. Wife was the trustor and guardian ad litem, and Objector served as the original trustee. The trust receives approximately \$6,000 per month income from an annuity purchased for the settlement, valued at \$1.6 million.

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<sup>2</sup> In the course of preparing this appeal for oral argument, this court issued an order to show cause re: monetary sanctions against Appellant and/or her attorney, for a frivolous appeal. Argument was heard on the sanctions issue together with the related appeal. (D052972.) No such sanctions will be imposed, for reasons to be explained.

Shortly after the trust was established, conflicts arose between Wife and Objector about the use of the trust money, and conflicts existed between Wife and Conservatee's mother and brothers ("birth family") about the money and his care. Objector commenced the related conservatorship proceedings in November 2007, on the basis that Conservatee could not handle his own affairs. Her petition referred to a Los Angeles superior court proceeding filed October 3, 2007, *In re Bibiana Becerra Irrevocable Trust*, No. BP 106987 (i.e., a "request for case number with trust attached"). We will discuss that filing further in our description of the augmentation materials, *post*.

In a competing petition filed in February of 2008 in the conservatorship file, Donnelly, with the support of Wife, sought appointment as the conservator. In response, the probate court appointed counsel for the Conservatee (the CAA), and she filed several reports, beginning March 11, 2008. The probate court investigator also filed reports, as described below (March 17 and April 10). On March 14, 2008, Objector withdrew her own conservatorship petition, because she had obtained a Spanish-speaking psychologist's opinion that Conservatee had adequate mental capacity. However, Donnelly's petition was still pending, and she obtained another medical opinion and capacity declaration from the Conservatee's treating psychiatrist, Dr. Gardner, that a conservatorship was necessary due to the traumatic brain injury that Conservatee had suffered.

Meanwhile, Wife sought separately to litigate Conservatee's rights regarding the trust, by causing Donnelly to bring an independent petition for removal of Objector as trustee, and to have the private trust supervised by the court (filed March 10, 2008,

obtaining a hearing date of April 25, 2008). (§§ 15642, 16420, 17200 et seq.) As part of the relief requested, Donnelly sought an order suspending the powers of Objector to act as trustee, and appointing Donnelly as interim trustee, on the grounds that Objector had insufficient connection to Conservatee, lacked standing due to the dismissal of her own petition, had not filed any trustee's reports and was wasting assets.

Many hearings followed in the related cases, in which Donnelly and the CAA alleged that the proposed conservatee was being subjected to undue influence by Objector and his birth family. These hearings also involved discussions of the related trust case and Objector's role in it. Although Objector continually referred to the Los Angeles trust proceeding, the attorney for Donnelly told the court on April 11 that they had never seen any such document, and the CAA did not disagree. Although the hearing to remove the trustee was originally noticed by Donnelly for April 25, the CAA obtained an advanced ex parte hearing on the same matter on April 15.

Objector filed written objections to the requests to remove her on April 15 and April 23 (each verified one day earlier), arguing that since her place of administration was in Los Angeles, Los Angeles County had exclusive jurisdiction of the trust. She relied on section 17002 as establishing jurisdiction in the place of business of the trustee.

At the ex parte hearing on April 15, Judge Brown issued orders removing Objector as trustee and appointing Donnelly in her place, pending the scheduled hearing set for April 25. Neither Objector nor her attorney appeared at either of those hearings. At the second hearing, held before Judge Cline, he inquired about her absence, but other counsel did not know why she did not respond to the notice of the hearing, except she might have

believed it was stayed due to her stated intention to appeal other orders, such as an attorney fees ruling in the conservatorship matter.

Judge Cline formalized the removal order April 30, 2008. It provides that he will be assigned as presiding judge over both the conservatorship and trust matters, to avoid conflicting orders. (Objector does not contest that portion of the order, as she notes in her notices of appeal.) The order recites that the court took jurisdiction over any and all proceedings relating to the trust, and Objector's powers were suspended until further order. Donnelly was appointed as temporary trustee, and Objector was ordered to file an accounting covering the period from January 1, 2007 to the present. A review hearing was set and the existing orders in the conservatorship and the trust matter remained in full force and effect.

Objector appeals. (§ 1300 ["appeal may be taken from the making of, or the refusal to make, any of the following orders: [¶] . . . [¶] (c) Authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary; [¶] . . . [¶] [or] (h) Transferring the property of the estate to a fiduciary in another jurisdiction"]; § 1304, [final order under Chapter 3, commencing with Section 17200, is appealable].)

## B. Judicial Notice on Appeal

Pending appeal, we denied consolidation of this case with the conservatorship matter, as well as two pending appeals of attorney fees and sanctions orders.<sup>3</sup>

Donnelly's attorney submitted several documents to augment the record, and we issued an order treating that request for augmentation as a request for judicial notice on appeal, and it is now before us. (Evid. Code, § 459.) These documents include a Workers' Compensation Appeals Board (WCAB) order denying a request by Objector to reconsider a July 3, 2008 appointment of Donnelly as guardian ad litem and trustee for the Conservatee in the worker's compensation matter. The WCAB dismissed her petition and left Donnelly in place to act there, on behalf of Conservatee.

Judicial notice is also requested of documents in the related conservatorship proceeding: the original petition in which Objector sought to establish the conservatorship, although she later withdrew it; and a declaration filed by an attorney, James M. Stern, who represented Wife (as guardian ad litem of Conservatee) in the worker's compensation case. This declaration describes the extreme conflicts between Wife and her former attorneys in the worker's compensation matter (Dennis A. Dascanio and legal assistant Gerardo Del Campo); Wife fired those former attorneys after they hired Objector as the trustee, pursuant to documents that Wife was asked to sign but said

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<sup>3</sup> Another appeal in this case, by Objector of an attorney fees award in favor of the CAA, payable by the trust, is set for hearing on the May oral argument calendar. (D053574.) An additional appeal referenced in the briefs by Objector attacks a sanctions award to the trust and the CAA, for conduct that was found to interfere with the CAA's representation of the Conservatee, and it is not yet on calendar. (D053519.)

she did not understand. It was the opinion of Attorney Stern that those former attorneys, as well as Objector and Objector's attorney Paquette, did not have the Conservatee's best interests in mind and were trying to take control of his money, to the exclusion of Wife.<sup>4</sup>

In addition, judicial notice of one of the probate court investigator's confidential reports, dated April 10, 2008, is sought. He concurred with the views of Attorney Stern. We grant these judicial notice requests from the conservatorship and WCAB proceedings, since conformed copies have been supplied and these documents may be judicially noticed as to the fact of their filing, although not for the truth of their contents. (Evid. Code, §§ 452, 459; *Mangini v. RJ Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-1064, overruled on another point, *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.) We may likewise take judicial notice of the CAA's March 11, 2008 report in the conservatorship proceeding. (Cal. Rules of Court, rule 8.147.)

Next, Donnelly appropriately seeks judicial notice of documents filed in the Los Angeles probate court proceeding initiated by Objector, by filing a "request for a case number with trust attached," on October 3, 2007. These include a portion of the Los Angeles Superior Court civil case summary document. The full version of that summary, obtained by our clerk's office, shows that the next filing Objector made in that case was her first report and petition for approval, filed April 25, 2008, with a hearing date of

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<sup>4</sup> Objector's main theme is that she and the Conservatee's birth family have knowledge that he wants to divorce Wife because when he was living at home, he had physical sexual difficulties and frustration, which Wife was unwilling to accommodate, and Wife is therefore unwanted or unfit to act as his representative; however, Objector was unable to convince the probate court of this point of view and has supplied no evidence of its validity.



June 5, 2008 noticed. The summary further discloses that Donnelly brought a demurrer to that petition, and the probate court in Los Angeles sustained it without leave to amend and dismissed the case September 4, 2008. Our internal court records show, and Objector admits, she has appealed the dismissal order to the Court of Appeal in the Second District, and the case is at the briefing stage.

## DISCUSSION

### I

#### *ISSUES PRESENTED*

These proceedings generally fell within the scope of section 17200, subdivision (b), allowing a trustee or beneficiary of a trust to petition the court concerning the internal affairs of the trust, such as "(b)(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right; [¶] . . . [¶] (10) Appointing or removing a trustee; [¶] . . . [¶] (16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction." Review of the probate court's interpretation of statutes is de novo, as is review of the related legal rulings subsumed in the order on appeal.

(*Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1084, fn. 7, disapproved on another point, *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 280.) To the extent the court had to make factual findings, those are reviewed for substantial evidence support. (*Conservatorship of O'Connor, supra*, at p. 1084.)

Objector mainly argues statutory interpretations of sections 17000 et seq. to support her claim that it was error or an excess of jurisdiction for the San Diego probate court to take jurisdiction over all proceedings relating to the trust. She theorizes that

under section 17002, subdivisions (a) and (b), subject matter jurisdiction was conclusively determined by the October 2007 filing she made in Los Angeles, where her own place of business is located, so that priority of jurisdiction was established there.<sup>5</sup> (See *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1450 (*Glade*).) She contends that under section 17005, subdivision (a)(1), establishing venue for trust matters, the proper county for commencement of a proceeding involving a living trust is "the county where the principal place of administration of the trust is located," and that her business location defines the principal place of administration of the trust.

As subsidiary arguments, Objector speculates that racial bias could have been at fault when she was removed, because the probate court had inquired during the conservatorship hearings whether she spoke English (although this groundless argument is not seriously pursued). She also contends the record does not support the orders in the respondent's favor, due to supposed conflicts of interest, because the attorney for Donnelly, the private fiduciary, originally said at a hearing that she represented Wife (which that attorney represents in her brief was inadvertent; we need not further consider this point as the record does not show any significant misrepresentations occurred).

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<sup>5</sup> Section 17002, subdivision (a) defines the "principal place of administration of the trust" as "the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust." If the principal place of administration of the trust cannot be determined in that way, it is determined by using the trustee's residence or usual place of business. (§ 17002, subd. (b)(1); 13 Witkin, Summary of Cal. Law (10th ed. 2005) Trusts, § 223, pp. 805-806.)

Understanding Objector's arguments requires us to briefly outline the contours of several related doctrines: subject matter jurisdiction, concurrent jurisdiction, departments of the superior or county court, and venue. As we will explain, Objector incorrectly and misleadingly interprets section 17000 et seq., the jurisdiction and venue provisions for trust matters.

## II

### *PRINCIPLES AND STATUTORY SCHEME OF JURISDICTION IN PROBATE MATTERS*

"California's single trial court, with unlimited monetary and subject matter jurisdiction, is the superior court. [Citations.] [¶] The superior court is a court of record [citation] and a court of general jurisdiction. It is, however, more than a trial court of general civil and criminal jurisdiction. It has both original and appellate jurisdiction, and, through its departments or branches, exercises two important kinds of special jurisdiction: probate and juvenile." (2 Witkin, Cal. Procedure (5th ed. 2008) Courts, § 208, pp. 293-294.) When statutes give a distinct subject matter jurisdiction to a special department, such as probate, only a judge in that department should exercise that power in a particular matter. (*Id.* at § 223, p. 306.)

The superior court of any county, sitting in probate, is a court of general jurisdiction in trust matters. (§ 17001; 13 Witkin, Summary of Cal. Law, *supra*, Trusts, §§ 217-221, pp. 799-803.) Under section 17004, a superior court deciding trust proceedings may exercise jurisdiction on any basis not inconsistent with state and federal constitutional provisions. (Code Civ. Proc., § 410.10.) The probate court is authorized to

use its own venue rules regarding trusts or those applicable to civil actions generally. (§ 17005, subds. (a)-(c).) "The probate court's general jurisdiction encompasses 'the internal affairs of trusts' and '[o]ther actions and proceedings involving *trustees* . . . .'" (§ 17000, subds. (a) & (b)(3), italics added.)" (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 426.) Within its jurisdiction, the probate court may take various supervisory actions, and they may be reviewed for any excess of jurisdiction. (*Ibid.*)

Objector's arguments that are based on jurisdiction must also be viewed in light of venue principles, for this reason: "When the parties disagree on which court has jurisdiction to hear a trust matter, the issue of jurisdiction can become intertwined with the issue of venue. [Citation.] If a court has already properly assumed jurisdiction over the internal affairs of a trust, one can argue that that court is the exclusive forum under the doctrine of prior exclusive jurisdiction." (1 Trust and Probate Litigation (Cont.Ed.Bar 2008) § 9.3, p. 220.)

Witkin further explains the distinction between venue and jurisdiction: "Venue is the place of trial—a particular county of the state. [Citations.] [¶] . . . In its strict sense, venue is not jurisdictional. Jurisdiction relates to the power of the court to act, and a court with that power may render a valid judgment even though it is not the court of the proper county for trial. [Citations.]" (3 Witkin, Cal. Procedure, *supra*, Actions, § 779, p. 1015.) However:

"The proposition that venue is not jurisdictional [citation] is not invariably true. The classifications of actions for venue purposes are mainly designed to secure the convenience of litigants. . . . [I]n a few situations the county of trial is specified by mandatory statutes expressing a governmental policy superior to the desires of the

litigants. These provisions relate to 'venue' only in the sense that they specify the county of trial; they are also 'jurisdictional.' [¶] (a) The residence of the decedent or the location of the decedent's property in a particular county, determines jurisdiction of the subject matter of a probate proceeding. [Citation.]" (3 Witkin, Cal. Procedure, *supra*, Actions, § 781, p. 1018.)

In 2 Witkin, California Procedure, *supra*, Jurisdiction, section 427 et seq. the authors describe concurrent jurisdiction, such as where one of several courts (California courts, federal and state courts, or courts of different states) could assert jurisdiction over a given matter. When issues of priority arise, both jurisdictional analyses and questions of comity or judicial discretion must be considered. (*Id.* at pp. 1077-1078.) The relevant policy factors include "(a) the nature of the action or other proceeding, i.e., whether it is in rem or in personam; and (b) the nature of the courts, i.e., whether the conflict is between California courts, federal and state courts, or courts of different states." (*Id.* at p. 1078.) Policy considerations may be taken into account when analyzing priority of jurisdiction questions. (*Ibid.*; see *Childs v. Eltinge* (1973) 29 Cal.App.3d 843; 2 Witkin, Cal. Procedure, *supra*, § 428, p. 1079 ["the court held that the rule of priority of jurisdiction is one of policy and should not control where countervailing policies apply"].)

Objector relies on the analysis of the priority of jurisdiction doctrine in *Glade*, *supra*, 38 Cal.App.4th 1441, 1449-1450, as supporting her argument that the San Diego probate court was "interfering" with previously asserted jurisdiction by the Los Angeles court. We first acknowledge that in light of the rules outlined above, it is theoretically possible that this trust could have been administered in the probate court of either Los

Angeles County or San Diego County, as a matter of concurrent jurisdiction, if all parties had consented or waived any opposing claim of jurisdiction. (See 3 Witkin, Cal. Procedure, *supra*, Actions, § 781, p. 1018.) However, there was no such consent or waiver, so this court is required to analyze this record to determine the correctness of the San Diego probate court's interpretation of the statutory scheme and its application of those rules to these circumstances.

### III

#### *APPLICATION OF RULES*

##### A. Trustee's Los Angeles Connections: Trust Administration?

Based on section 17002, subdivision (b)(1), Objector defines the "principal place of administration of the trust" (i.e., "the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust"; § 17002, subd. (a)) as her place of business in Los Angeles. She also believes section 17005, subdivision (a)(1) supports venue only in Los Angeles probate court (where her so-defined principal place of administration of the trust was located).

However, the only connection of trust affairs with Los Angeles is Objector and her case filing there. The record contains no indication that any relevant orders were ever issued by the Los Angeles courts to govern or supervise the trust. Therefore, her reliance on the above provisions does not solve the jurisdiction problem, and it is misplaced because the sections she relies on, 17002, subdivision (b)(1) and 17005, subdivision (a)(1), must be read in light of and subordinate to the preceding and more general

definitional subdivision (a) of section 17002. That subdivision (a) of section 17002 provides that a trust case should be heard in the "principal place of administration of the trust," i.e., "the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust." Only if the principal place of administration of the trust cannot be determined from an analysis of the day-to-day activity of the trust (§ 17002, subd. (a)), will the courts turn to the place of business of the trustee, and designate it as the principal place of administration of the trust (pursuant to § 17002, subd. (b)(1)). (60 Cal.Jur. 3d (2005) Trusts, § 375, pp. 519-520.) Also, section 17005, subdivision (a)(1) allows venue in the trustee's county of residence, but under subdivision (b) of that section, a living trust with no trustee is subject to litigation in the county where the trust property is located.

In *Glade, supra*, 38 Cal.App.4th 1441, the appellate court was dealing with the problematic situation in which one department of a county's superior court had made orders that conflicted with orders from another department (e.g., family versus civil, probate versus family, etc.) In *Glade*, there was interference with previously asserted jurisdiction, described as follows:

"Even though a superior court is divided into branches or departments, pursuant to California Constitution, article VI, section 4, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any particular judge or department. Whether sitting separately or together, the judges hold but one and the same court. [Citation.] Because a superior court is but one tribunal, '[a]n order made in one department *during the progress of a cause* can neither be ignored nor overlooked in another department . . . ' [Citation.] [¶] ' ". . . It follows, . . . where a proceeding has been . . . *assigned for hearing and determination to one department of the superior court by the presiding judge . . . and*

*the proceeding . . . has not been finally disposed of . . . it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the department to which the proceeding has been so assigned . . . .* If such were not the law, conflicting adjudications of the same subject-matter by different departments of the one court would bring about an anomalous situation and doubtless lead to much confusion. [Citation.] " . . . ' (Ford v. Superior Court (1986) 188 Cal.App.3d 737, 741-742.)" (Glade, supra, 38 Cal.App.4th at pp. 1449-1450, italics added.)

Objector cannot show that the problems identified in *Glade* were present here, because even assuming that the superior courts of different counties, Los Angeles and San Diego, originally could have had coequal jurisdiction over this trust matter, there was no significant activity by the court in Los Angeles that amounted to an effort "to assume and exercise jurisdiction over a matter," thereby to acquire exclusive jurisdiction entitled to deference. (*Glade, supra*, 38 Cal.App.4th at p. 1450.) "A judgment rendered in one department of the superior court is binding on that matter upon all other departments until such time as the judgment is overturned. [Citation.]" [Citations.]" (*Ibid.*) According to our record, there was no judgment nor even any orders rendered by the Los Angeles court as of the time the subject conservatorship and trustee removal proceedings were going on.

As explained in 2 Witkin, California Procedure, *supra*, Courts, section 229, pages 313 to 315, the doctrine of priority of jurisdiction is properly invoked when there has been some assumption of jurisdiction by the first court, and this exercise of authority should be judicial in nature rather than merely clerical:

"[W]hen a case has been assigned to one department and the judge of that department is proceeding to hear it . . . [that] judge must of course be allowed to exercise exclusive jurisdiction over that case until its determination, free from unwarranted interference by the judge of another department. The problem is analogous to that



arising where two distinct courts have concurrent jurisdiction over a class of cases, and the first court to assume jurisdiction over a particular case has a prior exclusive jurisdiction. But the conflict between departments is not quite the same as a conflict between courts. Where distinct courts are involved, the conflict is sometimes held to affect subject matter jurisdiction. [Citation.] Where the conflict is merely between judges of different departments of the same court, it would seem that subject matter jurisdiction is not affected and that the objection is one of excess of jurisdiction on the part of the interfering judge." (*Id.* at p. 313.)

Thus, the fact that Objector filed one document in October of 2007 in Los Angeles (a request for a case number with trust attached), does not demonstrate that any significant trust administration went on in Los Angeles, to require that the case remain in Los Angeles, within the meaning of section 17002, subdivision (a). For example, Donnelly pled in her conservatorship petition that Objector had not provided accountings of trust matters to the participants in the San Diego proceedings, when requested to do so.

The San Diego probate court and the Los Angeles probate court are of equal dignity in a determination of the proper jurisdiction for this trust proceeding, and the Los Angeles filing date alone did not create priority of jurisdiction there. (§§ 17001, 17004.) Our research of the Los Angeles Superior Court docket database shows that no further filings occurred there until April 25, 2008, the very day that a noticed hearing was held in San Diego to confirm the ex parte removal of Objector as trustee. To the extent that personal jurisdiction over the trust was ever appropriate in Los Angeles, no meaningful activity was shown to have occurred there. Moreover, the November 2007 filing of the conservatorship by Objector in San Diego County severely undermined any justification for jurisdiction in Los Angeles over trust affairs. Likewise, by filing weak and

unsupported opposition to the ex parte and noticed hearing removal requests, Objector further undermined her position that the matter belonged in Los Angeles.

Objector incorrectly relies upon section 17402, as requiring a certain kind of petition to transfer a trust case from one jurisdiction to another. Such a petition is required when a California court is considering making an order to transfer trust property or the place of administration of a trust outside of California, under section 17401. Those sections do not apply by their terms to transfers between California counties, which are correctly analyzed in terms of venue. (See 3 Witkin, Cal. Procedure, *supra*, Actions, § 781, p. 1018.)

Objector has not shown that her activities in Los Angeles created prior exclusive jurisdiction there, and has failed to distinguish between the concept of venue, as it appears in section 17005, subdivision (a)(1), and the subject matter jurisdiction of the probate court as a department of the superior court of this state. (§ 17001.) She has also misinterpreted the statutory definition of "principal place of administration of the trust" under section 17002, subdivision (a). We next turn to the probate court's findings about San Diego jurisdiction to analyze their support in the record.

#### B. Trust's and Conservatee's San Diego Connections: Findings and Ruling

We first observe that the San Diego probate court took this action in April 2008, after several months of dealing with the separate conservatorship matter that Objector had initiated (although later dismissing her own petition), involving the very same trust funds and their usage by the Conservatee. Because of those competing conservatorship filings, the probate court was under a duty to pursue the best interests of the proposed

Conservatee, under section 1812, subdivision (a). This obviously included resolution of the struggle for control over the assets of the trust, which was created in San Diego. The two probate judges involved continued to distinguish between the two separate proceedings and successfully managed to confine their orders to the appropriate case files, although the companion matters were sometimes heard together.

The April 25 order taking jurisdiction over any and all proceedings relating to the trust, and suspending Objector's powers until further order, contains implied findings that the "principal place of administration" of the trust was San Diego, not Los Angeles, under the definitions in section 17002, subdivisions (a) and (b). (See fn. 5, *ante.*) Those findings are supported by the record, as follows: The trust property was created by the January 2007 settlement of the Conservatee's personal injury case in the San Diego court system, and since 2005, he has resided in a San Diego County care facility. When Objector accepted the trusteeship of the trust created in San Diego in January 2007, as a matter of law, she submitted personally and as trustee to the jurisdiction of the superior court. (§17003, subd. (a); 13 Witkin, Summary of Cal. Law, *supra*, Trusts, § 224, p. 806.) She could be said to have submitted to San Diego jurisdiction over the trust when, as trustee, she filed the November 2007 conservatorship proceedings in San Diego, where the proposed conservatee was located, only one month after obtaining a trust case number in Los Angeles. (*Ibid.*; see *Schwartz v. Labow*, *supra*, 164 Cal.App.4th 417, 426 ["The probate court's general jurisdiction encompasses 'the internal affairs of trusts' and '[o]ther actions and proceedings involving *trustees* . . . ." (§ 17000, subds. (a) & (b)(3), *italics added.*)"].) Under section 17002, subdivision (a), San Diego qualified as the

principal place of administration of the trust, for purposes of analyzing the day-to-day activity of the trust, i.e., caring for the Conservatee.

Further, when Wife caused the private fiduciary Donnelly to bring a competing conservatorship petition in March 2008, due to concerns that the trust was not being administered properly, she impliedly brought into dispute whether this case should fall under section 17005, subdivision (b), to provide a basis to conduct trust proceedings in San Diego (i.e., if there is no trustee, the proper county for commencement of a proceeding for appointing a trustee is defined as the county where the trust property or a portion of it is located). This petition to remove the trustee, based on the manner in which Objector had carried out her version of trustee duties, would have justified the probate court in concluding that essentially, there was no trustee who was protecting the interests of the trust beneficiary, Conservatee. Under such circumstances, section 17000, subdivision (b)(3) allowed the court having jurisdiction over the trust to have concurrent jurisdiction over other actions and proceedings involving trustees and third persons, which would have included the conservatorship. (13 Witkin, Summary of Cal. Law, *supra*, Trusts, § 221, pp. 802-803; see *Saks v. Damon Raike & Co.* (1992) 7 Cal.App.4th 419, 428-430 [the probate court should have exclusive jurisdiction relating to internal trust affairs, to avoid a multiplicity of actions, and a separate civil action seeking to bring such claims is inappropriate].)

All of these legal and factual criteria support defining San Diego as the "principal place of administration of the trust," where the "day-to-day activity of the trust" was carried on by the representative primarily responsible, and the probate court impliedly

found that person was Wife (the trustor and guardian ad litem), not Objector. (§ 17002, subd. (a).) The order taking jurisdiction over any and all proceedings relating to the trust, and suspending Objector's powers until further order, contained implied factual findings that the trust had not been administered in the best interests of the Conservatee, necessitating removal of Objector, and those findings are supported by substantial evidence. (*Conservatorship of O'Connor*, *supra*, 48 Cal.App.4th 1076, 1084.) This assertion of jurisdiction was consistent with the court's concurrent duties to evaluate the circumstances of the Conservatee, who was also the sole beneficiary of the trust, and to supervise the affairs of the trust. (§ 17200, subds. (a), (b).) The court used correct legal analyses and did not abuse its discretion. (*Zador v. Kwan* (1995) 31 Cal.App.4th 1285, 1303.)

Finally, regarding sanctions, this record is susceptible of an interpretation that some form of gamesmanship has been engaged in by Objector and her attorney, that is completely inconsistent with any appropriate trust purposes. However, even though we allowed the interim trustee an opportunity to reply to opposition filed by Objector, no information was supplied in a timely manner about the expenses the trust incurred in opposing this appeal. Admittedly, this substantive area of the law, jurisdictional analysis in the probate and trust context, is complex. Despite our concerns about the nature of Objector's positions taken as trustee, we cannot find that the subjective or objective tests for a frivolous appeal were conclusively satisfied under all the circumstances, and no sanctions are awarded. (*In re Marriage of Flaherty* (1981) 31 Cal.3d 637, 650.)

## DISPOSITION

Judicial notice is granted and the orders are affirmed. No sanctions are awarded.

The ordinary costs on appeal are awarded to Respondent.

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HUFFMAN, Acting P. J.

WE CONCUR:

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NARES, J.

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AARON, J.